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Current Topics.

Recent Constitutional Developments.

PROFESSOR A. BERRIEDALE KEITH, in a recently published work, entitled "The Constitution Under Strain" (Stevens and Sons, Ltd., 2s. 6d.), expresses some strong opinions on recent developments in international law and constitutional law. In the first two sections on the international crisis of September, 1938, and the advance into war respectively, Professor KEITH notes the complete denial of the principle of self-determination in the settlement of Munich, the abandonment of the League Covenant involved in the recognition of the conquest of Ethiopia by Italy, the incompatability with democratic principles of the failure to refer the question of British policy to the Commons at the time of the crisis, and finally, he deals at some length with the contrast between the peace aims of Germany and those of the United Nations, with a brief reference to the Atlantic Charter. In a section on the aid derived from the British Commonwealth the writer notes the difficulties with regard to India, and expresses the opinion that Sir STAFFORD CRIPPS' offer to India of permission to frame a constitution which would permit the right to secede from the British Empire creates a position of great difficulty for the Empire, and that "the introduction of this doctrine is extremely grave." He also notes the error of the British Government in 1938 in releasing Eire from the undertaking given in the Treaty of 1921 to permit the United Kingdom to make any demands upon the territory for defence in war time. In spite of the neutrality of Eire, Professor KEITH observes that the High Court has decided without hesitation that British subjects who are in origin connected with Eire, but who have been resident for a considerable period in the United Kingdom, excluding Northern Ireland, are liable for military service in Great Britain (*Murray* v. *Parkes* (1942), 58 T.L.R. 231). After a section devoted to the growth and development of the War Cabinet, Professor KEITH wrote of Parliament, agreeing that the decision in *Liversidge* v. *Anderson*, 110 L.J.K.B. 724, was rightly made, and, under the heading "Freedom of Speech," records the steps taken by the Government under the powers in reg. 2D of the Defence (General) Regulations, 1939. He finds it definitely difficult to approve permission to plead conscientious objection and notes a case in which an objector was sentenced to five years' penal servitude for an assault on the chairman of a tribunal. In times like these, when increasing encroachments are necessarily made by the executive on the functions of the judiciary, and liberty is restricted in many ways, it is a matter for congratulation that an authority of the standing of Professor KEITH should maintain a viligant watch over the institutions of democracy, lest under the stress of war, any of our liberties should be permanently impaired.

Incitement to Crime.

SOME disquiet has been caused by a recent disclosure of methods which are alleged to have been used by officials of the Board of Trade in attempting to secure convictions for offences against the clothing coupon and other emergency regulations. In a recent issue of the *Spectator*, Mr. HAROLD NICHOLSON referred to two cases in which he stated that inspectors employed by the Board of Trade had visited traders, and after successfully inciting them to break the law, had initiated prosecutions against them. At a meeting of the Chelsea Borough Council on 26th August, Major THESIGER said that he did not think that in order to obtain convictions people should be tempted into crime, and that those were the methods that prevailed in Germany. Again, in a prosecution at Old Street Police Court, on 28th August (*The Times*, 29th August), for supplying a fur coat without coupons, the evidence showed that a representative of the Board of Trade visited the accused and, having tried on a fur coat, attempted to persuade her to let her have it without coupons. The defendant replied that she must have coupons or otherwise she would be fined £100, but she would let her have the coat if she brought the coupons that afternoon. The comment by the defence was that it was strange and un-English that Government departments should employ persons to go round and deliberately tempt stall-holders to break the law, and that a sort of *agent provocateur* should be paid to go round to encourage people to commit these offences. The learned stipendiary magistrate, Mr. ROWLAND THOMAS, K.C., said: "It seems that there was some persuasion on the part of the representative of the Board of Trade. I think the less said about it the better. It does seem to me that when a trader indicates that he does not want to sell without coupons the less persuasion used to obtain the goods from him the better." A fine of 40s. was imposed. It is difficult, and, indeed, the learned magistrate seems to have found it difficult, to avoid using strong language about measures such as these. The English law is not without its antidote to that sort of incitement to crime. Section 8 of the Accessories and Abettors Act, 1861, declares the common law that a person who aids, abets, counsels or procures the commission of any misdemeanour at common law or by virtue of any Act passed or to be passed shall be liable to be tried, indicted and punished as a principal offender. It may be presumed in favour of the authorities that these cases represent lapses by enthusiastic subordinates, and are not undertaken in pursuance of any official instructions, but, perhaps, the obvious public reaction to them, as well as the high degree of probability that magistrates will find it unsafe to convict on the evidence of inspectors who are actually accomplices (*R.* v. *Wyman* (1918), 13 Cr. App. Rep. 163) will induce the responsible Government departments to issue positive instructions prohibiting the use of these unjust devices. According to more recent information, both the Ministry of Food and the Board of Trade have given some instructions of this nature.

Rural Planning.

THE imposing results of Lord Justice SCOTT'S Committee on Land Utilisation in Rural Areas are embodied in a report of 138 pages, including a full index of ten pages, which has recently been issued by H.M. Stationery Office (Cmd. 6378, price 2s.). The committee was appointed in October, 1941, by LORD REITH, as Minister of Works and Buildings, in consultation with Mr. HUDSON, as Minister of Agriculture, "to consider the conditions which should govern building and other constructional development in country areas consistent with the maintenance of agriculture, and, in particular, the factors affecting the location of industry, having regard to economic operation, part-time and seasonal employment, the well-being of rural communities and the preservation of rural amenities." Sittings were held regularly for sixty full days and over 100 memoranda specially prepared by 111 Government departments, authorities, organisations and individuals were studied. The committee regards all its proposals as essentially and immediately practical and practicable and much that it proposes as requiring goodwill rather than money. The majority report contains recommendations and suggestions on the improvement of rural housing through the building of an adequate supply of houses ready to take water, gas and electricity supplies, the preparation of plans by the appropriate authorities to provide these supplies, the reconsideration of the rating assessment position by the Government since at present it may hinder improvements, and the appointment of women as members of all housing committees of local authorities. The number of tied cottages should be brought to a minimum and farm workers be encouraged to have cottages built for their own occupation, and with this end in view the subsidy provisions of the 1938 Housing Act should be more widely known. It is also recommended that all agricultural buildings should be brought under planning control. The position with regard to wayleaves should

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be examined, and electricity, gas and water supply undertakings put on a comparable footing; provision for rights of compulsory acquisition of land and wayleaves should be embodied in local planning schemes. The report states that there should be a statutory obligation on the local planning authority to record on maps and to signpost clearly all undisputed rights of way and to try and reach agreement with owners in disputed cases, a small Footpaths Commission to be set up to investigate disputed cases and to give decisions. This Commission, it is stated, should have the duty of recommending the opening of new footpaths and closing of old, to be made legally effective by an order from the Central Planning Authority. The local authority should be under a statutory obligation to supervise and keep up footpaths, and there should be regulation of use of rights of way on the basis of a formula agreed by a committee of interested bodies, and, failing agreement, by legislation. In the case of road construction, greater co-ordination and collaboration between the planning, highway and agricultural authorities is recommended and there should be bold planning for a number of new trunk highways. The exemption of railway undertakings from planning control, it is stated, should cease. The report also deals expansively with industry, housing, petrol stations, advertisements, cemeteries and a number of other important matters, but, most important of all, is the fact that it recommends that local planning must be compulsory and not permissive. It may be thought that the suggested planning unit of the county or county borough is not sufficiently large, but compulsory consultation between neighbouring planning authorities and the correlation of local plans to a super-imposed national plan should do something towards meeting this objection. Almost equally important is the recommendation, under the heading "Five Year Plan for Britain," that most of the recommendations should be carried out within a fixed space of time after the end of the war.

The Minority Report.

PROFESSOR S. R. DENNISON'S minority report is published in the same volume. He states that though he is in agreement with many of his colleagues' recommendations with regard to the details of planning, he cannot accept the particular interpretations of "the maintenance of a prosperous agriculture," "the well-being of rural communities," and "the preservation of rural amenities" which he understands his colleagues place upon these concepts. In regard to the maintenance of agriculture, Professor DENNISON finds it impossible to avoid dealing with the question of the standard of life of the rural worker and points to the changes that have affected the type of agriculture owing to the war, and also to increased mechanisation. The writer also criticises the positive proposals of the majority for the well-being of rural communities, particularly in relation to housing, on the score that they appear to raise as many issues as they solve and rest on the assumptions that workers will be able to pay "economic rents," and that agriculture will be prosperous. The question of cost, he states, is most relevant to the provision of public utility services. His considered view is also that "rural" is not necessarily synonymous with "agricultural," and he doubts whether amenities depend upon farming or upon a particular method of agriculture, and suggests afforestation and the creation of parklands as two of them. The solution, Professor DENNISON states, lies in more comprehensive planning control. His recommendations include the introduction of industry into the countryside, under effective planning control, meeting the needs of agriculture through the normal machinery of planning schemes, giving the agricultural user an opportunity to show cause why change of use of a particular piece of land should not be allowed, construction for statutory undertakings, road developments, and all Government construction to be subject to planning control, the control of design and siting of all construction, and the taking into account of the special needs of agricultural workers in post-war housing schemes. Though the minority report shows some differences in outlook upon and angle of approach to the problems from that of the majority, there is no reason why those representing both schools of thought should not work together to hammer out their five-year plan. All that is needed, as the majority report states, is goodwill, and, as is well known, where there is a will there is a way.

The Compensation (Defence) General Tribunal Rules.

AN amendment to the Compensation (Defence) General Tribunal Rules, 1939 (S.R. & O., 1942, No. 1667, dated 31st July), inserts a new r. 4A after r. 4. The new rule provides that where a dispute has arisen as to whether any compensation is payable under the Act in respect of the severance of any fixtures under Defence Regulation 50B, or as to the amount of such compensation, the tribunal shall have power at the hearing of such dispute (i) to adjourn the hearing in any case in which it appears to the tribunal that any person entitled to an estate or interest in such fixtures may not have received notice of the severance; (ii) to direct the registrar to give to any such person a notice informing him that if he desires to make a claim in respect of his estate or interests in the severed fixtures he must serve upon the competent authority and upon such other person as the tribunal may direct and within such time as the tribunal may allow a notice of claim in the form prescribed for the purpose by the Treasury in the Compensation (Defence) Notice of Claims Rules (1942, S.R. & O., No. 1349). On an adjournment being made, the tribunal has power to make an interim award. Moreover, if the tribunal is satisfied that any person to whom compensation is payable did not know of the severance of the fixtures in time to give notice of claim therefor in accordance with s. 11 of the Compensation (Defence) Act, 1939, and such person gives notice of claim within a reasonable time after the severance became known to him, the tribunal has power to order payment of compensation to such person equal to such part (if any) of the compensation as he would have received if he had given due notice of his claim, and upon the application made to it by the authority, to order any person to whom the authority has previously paid compensation in respect of the severance to refund to the authority such compensation or such part thereof as the tribunal may direct. "The authority," as defined in r. 2, is the Government department which is concerned with the settlement of the dispute or claim which is the subject of a reference.

Fire Guards: The Orders.

SINCE writing the "Current Topic" on fireguards which was published last week (*ante*, p. 244) the text of the orders to which we referred has become available (the Civil Defence Duties (Compulsory Enrolment) Order, 1942, dated 15th August (S.R. & O., No. 1654), and the Fire Prevention (Business Premises) (No. 3) Order, 1942, dated 15th August (S.R. & O., No. 1655)). It is quite clear from art. 2 of the former order that it is the duty of the local authority to require registration from time to time of British subjects resident in their areas who have not already been registered by that local authority. In view of the slowness with which enrolment notices have been forthcoming in some areas, it is interesting to observe that under art. 3 the service of enrolment notices on registered persons is in the discretion of the local authority. Article 5 contains important provisions relative to training, requiring an enrolled person to comply with any directions given to him by a person authorised by the local authority by whom he was enrolled and to attend at a specified time and place for the purpose of receiving such instruction and training and to comply with directions given to him in the course of such instruction and training by the person in charge thereof. For the purpose of calculating the aggregate periods for which any enrolled person is required to perform fire prevention duties in any period of four weeks, any period during which he is required to attend for instruction and training must be included. The instruction and training in the case of business premises may be during or outside working hours, and may be at the premises or elsewhere. It is the duty of the occupier of business premises to secure that instruction and training shall be given with regard to (*a*) the characteristics of different types of incendiary bombs and other missiles likely to cause fire and the methods of dealing therewith; (*b*) the use of fire-fighting equipment and appliances, whether by individuals or by parties or by groups of parties, and the maintenance of such equipment and appliances; (*c*) the situation of any fire-fighting equipment and appliances and supplies of static water available for use at the premises where the duties are to be performed, and the situation and use of any hydrants, taps, switches and other appliances for controlling any supply of water, gas or electricity available for use at those premises; (*d*) the methods of giving warning and communicating information, and the situation at the said premises of any telephone or other instrument used for the purpose of giving warning and communicating information; and (*e*) the lay-out of the said premises and in particular the roofs, and the methods of obtaining access to the roofs and other parts of the said premises. Under the Enrolment Order there is no duty to provide training with regard to any of these matters, but it is enacted that the training provided by the local authority may comprise any of them. There can be little doubt that training and practice are at the root of any successful fire protection scheme, and more and better organisation of this will not be unwelcome.

House of Lords Appeals.

IT was announced in a recent issue of *The Law Society's Gazette* that in future appeals to the House of Lords from the Court of Appeal, the petition of appeal and cases and opinions of judges in the lower courts will be the only material to be printed and not more than twenty-five copies in all of the cases and opinions will be required to be lodged. In view of the diminished number of copies to be available in the future, it is regretted that it will not be possible to continue the supply to public libraries which have hitherto received copies of cases, etc. In respect of work carried out since 1st November, 1941, slightly increased rates for printing and duplicating will be allowed on taxation, but a new setting of type has been agreed upon, and the Judicial Office should be consulted before giving any order for printing or duplicating, so that the greatest possible economy can be observed in printing and in paper.

Procedure in 1941.

Review of the Year.

(*Continued from p. 246*)

Admissions by Counsel.

" It is not satisfactory in a county court, where it is a question of drawing inference from facts, and looking sometimes rather closely at the facts, that statements and admissions should be made and the case heard . . . as if on a case stated . . . I should suggest to county court judges that it is usually desirable to hear evidence upon which to base findings of fact, and that it is not desirable to base the findings of fact upon the opening statement of counsel, even if the other side agrees with it " : *per* du Parcq, L.J., in *Mouser* v. *Major* (1941), 1 All E.R. 180, 185 ; 85 SOL. J. 103.

A timely observation. " Justice according to law " applies in the county court no less than in the High Court. A decision upon the facts may render unnecessary a decision upon a disputed point of law. Moreover, an oral admission of counsel in opening may not be phrased with that considered particularity which is normally found in an *agreed statement of facts* in the Commercial Court.

And finally, doubt has frequently arisen (in the absence of a complete note by the judge) among counsel themselves as to the exact extent of the admissions. It is better, therefore, to adhere to the ordinary rules—and the Court of Appeal have now declared that this must be done.

It is proper to say that in this case the learned county court judge reserved judgment and gave a considered judgment in which he clearly stated his findings and the admissions (*per* Scott, L.J., at p. 182). Nor, apparently, would the result have been different if the proper course had been followed (*per* du Parcq, L.J., at p. 185).

VII. At the Hearing.

Admissibility of Evidence.

In an action for breach of contract and for passing off, a proof of evidence taken from an employee of the plaintiffs, who is dead when the action came for trial, is inadmissible in evidence. Such a person is a " person interested " when proceedings are pending or anticipated involving a dispute as to a fact which the statement might tend to establish, and this statement is therefore excluded from admission by Evidence Act, 1938, s. 1 (3) (*Plomien Fuel Economiser Co.* v. *National Marketing Co.* (1941), 1 All E.R. 311 ; 85 SOL. J. 152).

A director and a shareholder of a limited company are persons " interested " ; whether a servant of a company is a person " interested " is a question of fact in all the circumstances of the case. A statement put in evidence which cannot be cross-examined upon should, in effect, be a statement made when proceedings are not pending or anticipated involving a dispute on a fact which the statement might tend to establish, and should be a statement by an " independent person." The honesty or the accuracy of the statement are irrelevant to its admissibility (*per* Morton, J., at p. 314).

Trying Case on Agreed Medical Report.

" It is of the greatest possible advantage that the doctor should be called and should give his evidence subject to cross-examination, and as a qualification of what he has written. To discourage people from affording the court the value of that assistance is a most unfortunate result " (*per* MacKinnon, L.J., in *Proctor* v. *Peebles* (*Papermakers*), *Ltd.* (1941), 2 All E.R. 80).

The trial judge, disapproving of the plaintiff calling the doctor, and thinking that the medical report should have been agreed, had visited that " error of judgment " with a penalty as to costs.

du Parcq, L.J., observed that in some cases the order for an agreed medical report may be useful, e.g., where a man has broken his leg, and there is but temporary injury. But where prognosis is important, it is " most desirable " that a doctor should be in court to answer questions (at p. 81). The order for an agreed medical report, if possible, should be made in proper cases only ; it should not be included as of course. The master or registrar should consider whether the case is suitable for trial on a report.

The trial of an action is fundamentally, and should remain, a *hearing*, i.e., of *viva voce* evidence.

No Evidence by Barrister acting as Counsel.

" A barrister may be briefed as counsel in a case or he may be a witness in a case. He should not act as both counsel and witness in the same case " (*per* Humphreys, J., in *R.* v. *Secretary of State for India, ex parte Ezekiel* (1941), 2 All E.R. 546, 556).

The fact that no objection is taken by counsel on the other side is irrelevant.

Submission of No Case.

A judge should refuse to rule on a submission that there is no case unless counsel for the defendants intimates that he is going to call no evidence (*per* Lord Greene, M.R., in *Laurie* v. *Raglan Building Co.* (1941), 3 All E.R. 332, 337.

There is " no particular magic about that question being asked " : counsel can make it clear by his words and acts that he does not intend to call evidence, and the judge is not then bound formally to put the question.

Thus, where counsel for the plaintiff interpolated that he assumed that counsel for the defendant was not going to call any evidence, and counsel for the defendant was silent, he must be assumed to have intimated his intention not to call evidence.

In the present case, at the end of the evidence called for the plaintiff, the judge ruled that there was no case. In daylight on a broad and good road, the defendants' lorry, heavily laden with wood, was being driven at 10 to 12 miles per hour. On the near side was a bus queue. The deceased husband of the plaintiff crossed the road to take his place in the queue ; the lorry came into contact with the queue, knocked down five people at the head of the queue, and knocked down and killed the plaintiff's husband, who was found lying on the pavement ; when he was struck he was probably on the pavement.

Even if the lorry itself did not mount the pavement, it was clear that the tail of the lorry overhung the pavement so as to strike persons lawfully thereon. The vehicle was in a position where it had no right to be (at pp. 335, 336). The plaintiff had given evidence of a skid, and the defendants thereupon submitted that a skid displaced the *prima facie* case of negligence. Lord Greene observed that a skid was neutral : it may or may not be due to negligence (at p. 336). In the present case, the road had frozen and the surface was like glass. The lorry had no chains on its wheels ; it was going too fast. A prudent driver would have proceeded much more slowly.

See also the learned note in 58 L.Q.R. 155–7, distinguishing this case from *Wing* v. *London General Omnibus Co.* [1909] 2 K.B. 652.

(*To be continued.*)

A Conveyancer's Diary.

Contracts to sell Land : Effect of Requisitioning.

IN the " Diary " of 21st February of this year I discussed the general legal effect of the " requisitioning " of land with particular reference to the decision of Bennett, J., in *Re Winslow Hall Estates Co. and United Glass Bottle Manufacturers, Ltd.'s Contract* [1941] Ch. 503 ; 85 SOL. J. 392 (hereinafter, for brevity, called *Re Winslow*). In that case there was an ordinary contract to sell land with completion on 25th January, 1941. On that date the vendors were not in a position to complete, not having got all the necessary signatures to the conveyance. The conveyance was in fact ready by 31st January and the purchasers were so informed. In the meantime, on 24th January, a representative of the Office of Works visited the premises and observed that they would be requisitioned. On 25th January, the same day as that fixed for completion, the Office of Works served a notice on the purchasers (presumably as equitable owners of the property under the contract of sale) saying that " the Government have come to the conclusion that it is essential in the national interest to take immediate possession of the above premises occupied by you." (The word " occupied " seems to have been wrongly used in regard to the purchasers.) " I must therefore ask you to take this letter as formal notice that the Office of Works *are entering on and taking possession of the premises forthwith.*" Nothing more occurred for some months, but eventually by 10th June the Office of Works had taken possession.

In the meantime, however, on 10th March, the purchasers took out a summons for rescission on the grounds that the vendors were unable to show a good title, in that *either* they had impliedly contracted to give a vacant possession and could not do so *or* that they had impliedly contracted to sell free of incumbrances and could not do so. Assuming, in the applicants' favour, that the contract contained these two implied terms, they still had to show that the property was incumbered or that the vendors could not give vacant possession. Bennett, J., rejected their arguments on both points. He observed that all land in England is liable to be taken at a moment's notice under reg. 51. The usual notice is a mere courtesy and has no legal effect. If reg. 51 is an incumbrance, all land is incumbered, so that obviously no one can contract to sell or buy free of that particular incumbrance. If the regulation itself is not an incumbrance, this particular land was not incumbered by a notice that had not been implemented. The Government had formed an intention to enter, but had done nothing about it. By the same token, the vendors were able to give vacant possession at the date fixed for completion, though the incoming possessors, like all possessors of land, were liable to be ousted by the proper authorities.

But Bennett, J., rested his decision on the fact that no entry had taken place. He observed, " I am not deciding what the rights of the parties would have been if possession had actually been taken before the vendors were in a position to complete the contract by conveyance and the giving of vacant possession."

The case thus left open has now been dealt with by Simonds, J., in *Cook* v. *Taylor* [1942] Ch. 349. In that case there was an agreement in writing dated 4th February, 1941, to sell freehold property, completion to be on 25th February. The agreement

incorporated The Law Society's Conditions, which say nothing expressly about vacant possession, but art. 33 of which incorporates any "particulars" used "in connection with" the contract. A document, presumably the ordinary estate agent's notice, had been given by the vendor's agents to the purchaser, and it included the statement that vacant possession would be given on completion. Simonds, J., held that this document came within art. 33 of the conditions and that there was an express contract to buy and sell with vacant possession. He also held that "as a matter of law, on a contract of this character, there is the implied term that vacant possession shall be given on completion." (Too much must not be read into this remark: the learned judge clearly refrained from deciding that all contracts are contracts to give vacant possession in the absence of express provision to the contrary.)

A week before the completion date, on 19th February, 1941, "the property was requisitioned and taken over" (by the local town clerk) "under the Defence (General) Regulations, 1939, reg. 51 (1), and the council was still in possession at the date fixed for completion. On 1st March, 1941, the first set of occupants arrived at the premises." This passage is taken from the statement of facts and is not very clear. But it seems from the judgment of the learned judge that what happened on 19th February was that the ordinary "requisitioning notice" was served *and that the local authority were given the keys*. Physical occupation only took place on 1st March, after the completion date.

The vendor brought an action for specific performance, and failed. The point was, of course, whether, granted that the contract was one to convey free of incumbrances and to give vacant possession on completion, the vendor could do either. The learned judge did not find it necessary to say anything on the question of incumbrance, but he held that the case was one where the vendor was not able to give vacant possession as he had contracted to do. "From the moment when the requisitioning authority served the notice and took the keys from the vendor, the vendor was not in a position to give vacant possession and was not in a position to allow the purchaser to enter on the property." He distinguished *Re Winslow* on the ground that, in *Cook* v. *Taylor*, on the date fixed for completion, the vendor could not give vacant possession "for he had already, pursuant to a proper requisition, parted with the keys of the property, which is equivalent to symbolical delivery of the property to the requisitioning authority." That, really, disposed of the case; the only other point made on behalf of the vendor was that the purchaser was, after contract, equitable owner of the property and that he must bear the loss caused by requisitioning as he would have to bear a loss by fire or flood. This argument could not, of course, prevail where the vendor had both expressly and impliedly contracted to give vacant possession, which contract he could not perform.

"Possession" is so wide and flexible a term that there are bound to be marginal cases where it is not certain whether the requisitioning authority has taken possession or not. But, subject to that question of fact, the position now seems reasonably clear. In those cases one must always, first, ask oneself whether there is a contract to give vacant possession. If there is, a requisitioning notice unaccompanied by any overt act of taking possession does not prevent its performance. "Symbolical delivery" to the authority does prevent its performance; *a fortiori* actual possession by persons acting for, or under the direction of, the authority, makes the vendor unable to give vacant possession. In view of these considerations, the question whether the property is "incumbered" by any or all of these actions on the part of the requisitioning authority seems to be merely academic. I have little doubt that these rules will produce a certain number of hard cases, but I do not see how that can reasonably be avoided where one has, as we are for the present bound to have, a system of arbitrary requisitioning. The great thing is that these rules have now been pretty clearly laid down and the advisers of vendors and purchasers now have guidance which will enable them to decide more easily what course they should recommend.

Obituary.

MR. JUSTICE PANCKRIDGE.

Sir Hugh Rahere Panckridge, a Judge of the High Court of Calcutta, died on Sunday, 23rd August, aged fifty-seven. He was educated at Winchester and Oriel College, and was called by the Inner Temple in 1909. The following year he became an advocate of the Calcutta High Court. In 1930 he was appointed a Puisne Judge of the High Court of Judicature, and received the honour of knighthood in 1939.

MR. T. C. HURLEY.

Mr. Thomas Charles Hurley, solicitor, of Messrs. George Williams & Hurley, solicitors, of Llandilo, died on Saturday, 22nd August, aged fifty-eight. He was admitted in 1911.

MR. H. W. STANTON.

Mr. Harold Westwood Stanton, O.B.E., B.A., Town Clerk of West Hartlepool, died on Monday, 31st August. He was admitted in 1915.

Landlord and Tenant Notebook.

Quitting an Agricultural Holding.

IF the requirement of briefness makes the arguments used in the county court case of *Corner* v. *Eyton*, reported in our issue of 22nd August (86 SOL. J. 239), somewhat difficult to follow, the report certainly touches on one or two points worth noting.

The matter arose out of arbitration proceedings in which the ex-tenant of an agricultural holding claimed compensation for disturbance. During his tenancy he had sub-let two cottages, the sub-tenants not being persons employed on the holding. The superior landlord having given notice to quit—not accompanied, apparently, by any statement of any of the reasons set out in s. 12 (1) (*a*)–(*f*) of A.H.A., 1923—the mesne tenant unsuccessfully tried to get rid of the sub-tenants before leaving. Subsequently a new tenant obtained an order for the possession of one of the cottages. The superior landlord contended, at the arbitration, that the applicant's failure to give him possession of the two cottages disentitled him to compensation for disturbance. The arbitrator stated a case on this point of law. His Honour Judge Samuel, K.C., held that the applicant had done all that he could to eject the sub-tenants and was not disentitled to compensation.

I have mentioned that the landlord did not, apparently, rely on any of the statutory reasons. Indeed, it would seem that the only possible ones would have been those specified in paras. (*b*) and (*c*) of the subsection mentioned: failure to remedy a breach of a term of the tenancy consistent with good husbandry, or materially prejudicing the interests of the landlord by committing an irremediable breach of such a term. But the definition of "rules of good husbandry" contained in s. 57 (1), comprehensive as it is, does not suggest that the letting of cottages to strangers, even if those cottages ought to be let to farm hands, would justify such a plea. And the landlord is reported to have contended not merely that the failure to give possession afforded a defence, but also that the applicant had not done all in his power to eject the sub-tenants.

It is the role played by the last-mentioned consideration which puzzles me. For I cannot find anything in the Act to suggest that a farm tenant who does not do all he can to give possession *thereby* forfeits his right to compensation for disturbance.

No doubt the cottages were within the Rent., etc., Restrictions Acts. At one time this factor might in some way have become significant. The situation reminds one of two decisions reported, all but in juxtaposition, in the same volume, *Reynolds* v. *Bannerman* [1922] 1 K.B. 719, and *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742 (C.A.). The former established that a landlord had no right of action for damages for failure to give possession when a sub-tenant (and in this case the sub-tenancy began before any of the Rent Acts had been passed) relies on the statutory protection—provided, at all events, that the mesne tenant does everything he can to give vacant possession. In the latter, the facts were that the defendant, tenant of a house on the Dulwich College Estate, was under covenant not to use or permit the house to be used otherwise than as a private house, and was also bound by a covenant against injury or annoyance to the lessors. He let the house by an underlease containing similar covenants, in breach of which the underlessee sub-let it in tenements to weekly tenants. The lessee under the head lease successfully sued his tenant for possession by virtue of a forfeiture clause. He took no steps to eject the weekly tenants, however, and for this failure he was now himself sued under the covenants mentioned. His answer was that he had considered taking such steps, but—to cite from the judgment of Bankes, L.J.—"considering the Act of 1920 and the state of the authorities on the construction of that Act, there was enough to justify any prudent solicitor in advising his client that in proceeding against the undertenants there was no certainty of succeeding but every probability of failure." The judgment proceeds: "and assuming that these covenants might in other circumstances impose a duty to take proceedings, it cannot be said that in the peculiar circumstances of this case the appellants abstained from taking reasonable steps to comply or secure compliance with them."

Briefly, then, in *Reynolds* v. *Bannerman* the mesne tenant did all he could, in *Berton* v. *Alliance Economic Investment Co.* he did nothing, but that was all he could be expected to do; and in both cases he was excused.

But these authorities could hardly contribute to the solution of the problem in *Corner* v. *Eyton*. For one thing, "other circumstances" obtained. The landlord, we are told, contended that the sub-letting had been wrongful; whether this means in breach of covenant or without leave apart from any covenant is not clear; but in the one case, breach of covenant has been a ground for possession, since the passing of the 1920 Act, s. 5 (5); in the other, it was made so by the 1923 Act. It may, of course, well be that the mesne tenant who sought possession on these lines would be met with the answer that he could not avail himself of his own wrong; and this would enable us to appreciate Judge Samuel's finding that the applicant in the case before him had "done all he could."

But this still affords no clue to the relevance of the consideration in a dispute as to compensation for disturbance.

What one would have expected to find was an interesting discussion on the point whether, one cottage at all events being still occupied, the tenant had fulfilled one of the first conditions, namely, that of quitting the holding. For s. 12, like s. 1 (providing for compensation for improvements), makes a dual stipulation: termination of the tenancy and the quitting of the holding. And while it does not matter how the tenant comes to quit—it may be in consequence of a writ of ejectment, as was held in *Mills* v. *Rose* (1923), 68 SOL. J. 420 (C.A.)—it does matter that he does quit the holding.

Now "land," in the definition of "holding," was said, by Swinfen Eady, M.R., in *Re Lancaster and Macnamara* [1918] 2 K.B. 472 (C.A.), "obviously" to include buildings: and "I treat the ordinary farmhouse or dwelling-house *and cottages* as part of the agricultural buildings." But since then s. 33 of the present Act has provided for separate treatment of land "not a holding within the meaning of this Act by reason only of the fact that the land so comprised includes land which . . . owing to the nature of the buildings thereon or the use to which it is put, would not, if it had been separately let, be a holding within, etc.," and provides that the provisions relating to compensation for improvements *and disturbance* shall not apply to such. By reference to this section, the tenant's plea in *Corner* v. *Eyton* might be considered sound.

Books Received.

Palmer's Company Law. By His Hon. Judge TOPHAM, LL.M., K.C., a Bencher of Lincoln's Inn. Seventeenth Edition, 1942. Royal 8vo. pp. cxii and (with Index) 720. London: Stevens and Sons, Ltd. 30s. net.

The Constitution under Strain. By A. BERRIEDALE KEITH, D.C.L., D.Litt., Hon. LL.D. 1942. pp. 72 (with Index). London: Stevens & Sons, Ltd. 2s. 6d. net.

Slack on Liability for National Service. First Cumulative Supplement up to and including 30th June, 1942. By G. GRANVILLE SLACK, B.A., LL.M.(Lond.), of Gray's Inn, Barrister-at-Law, and N. HOWARTH HIGNETT, Solicitor of the Supreme Court. pp. 83. London: Butterworth & Co. (Publishers), Ltd. 9s. net.

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 1658. **Canals and Inland Waterways.** Canal Control (No. 2) Order, Aug. 1.

E.P. 1654. **Civil Defence Duties** (Compulsory Enrolment) Order, Aug. 15.

No. 1667. **Compensation** (Defence) General Rules, July 31.

No. 1640. **Customs.** Export of Goods (Control) (No. 34) Order, Aug. 17.

E.P. 1678. **Emergency Powers** (Defence) Acquisition and Disposal o Motor Vehicles (Amendment) (No. 2) Order, Aug. 15.

No. 1676. **Export of Goods** (Control) (No. 35) Order, Aug. 24.

E.P. 1668. **Feeding Stuffs Distribution** (Licensing and Control) Order, Aug. 25.

E.P. 1694. Feeding Stuffs Distribution (Licensing and Control) Order, 1942. Gen. Licence, Aug. 25.

E.P. 1697. Feeding Stuffs Distribution (Licensing and Control) Order, 1942. Gen. Licence and Directions, Aug. 25.

E.P. 1695. Feeding Stuffs Distribution (Licensing and Control) Order, 1942. Gen. Licence (Retailers), Aug. 25.

E.P. 1696. Feeding Stuffs (Rationing) Order, 1942. Amend. Order, Aug. 25.

E.P. 1674. Feeding Stuffs (Rationing) Order, 1942. Directions, Aug. 21.

E.P. 1655. **Fire Prevention** (Business Premises) (No. 3) Order, Aug. 15.

E.P. 1671. **Food Control Committees** (Constitution) Order, 1939, Amend. Order, Aug. 20.

E.P. 1683. Food Control Committees (Local Distribution) Order, 1939. Gen. Licence, Aug. 22.

E.P. 1681. Food (Points Rationing) (No. 2) Order, 1942. Amendment Order, Aug. 22.

E.P. 1643. **Making of Civilian Clothing** (Restrictions) (No. 7) (Amend.) Order, Aug. 15.

No. 1577/L. 23. **Metropolitan Police Courts** (Divisions) Order in Council, Aug. 6.

E.P. 1662. **Quarries** (Opencast Coal Workings) Order, Aug. 13.

E.P. 1682. **Rationing** (Personal Points) Order, 1942. Amendment Order, Aug. 22.

E.P. 1691. **Regulation of Traffic** (Formation of Queues) (No. 2) Order, Aug. 17.

E.P. 1707. **Royal Observer Corps** (Employment) Order, Aug. 17.

E.P. 1690. **Siting of Ricks** (Amendment) Order, Aug. 20.

No. 1621. **Trading with the Enemy** (Specified Persons) (Amend.) (No. 13) Order, Aug. 18.

No. 1679. **Visiting Forces** (U.S.A.). Orders made by Army and Air Councils under para. 2 (3) of the Sched. to U.S.A. (Visiting Forces) Order, 1942.

No. 1665. **War Damage** (Business Scheme) (No. 9) Order, Aug. 19.

To-day and Yesterday.

LEGAL CALENDAR.

31 August.—In 1789, William Ward, a boxer, was tried at the Old Bailey for the murder of Edwin Swaine, an Enfield blacksmith, whom he had killed in a prize fight. He was found guilty of manslaughter only, there being no evidence of actual malice, and sentenced to be fined a shilling and imprisoned for three months. The judge expressed the opinion that the prevalence of boxing was no honour to the civilisation of this country and he wished it were laid aside. Ward was discharged from Newgate on the 31st August and immediately after was bold enough to offer public challenges for the Newmarket meeting. "Is this the effect of the wholesome severity of the law?" it was asked. "Or are these gross violations of humanity to proceed till more homicides are committed?"

1 September.—On the 1st September, 1739, at the Wells Assizes, "Thomas Lympus was condemned for robbing the Western Mail. By his information one Patrick, a dealer in hops, was seized there for being concerned with him in robbing the Bristol Mail a year ago last February, though he and one Bush were the cause of Lympus's being apprehended for that fact in France." Lympus was duly executed three weeks later.

2 September.—On the 2nd September, 1803, James Byrne was tried in Dublin for high treason. During the fighting in Thomas Street, on the night of Robert Emmett's abortive rebellion, the soldiers had taken three men prisoners, the accused being one. According to the evidence for the prosecution, he was seen holding a pike which he dropped when challenged and that on being seized he struggled very much and made a great noise. The defence contended that he was an innocent passer-by, that he had not carried a pike, and that it was quite natural for him to struggle, since he did not know in the dark whether he was in the hands of the military or the rebels. There was a considerable conflict of evidence, but the jury resolved it in five minutes and convicted him. He was sentenced to death, protesting his innocence, and executed.

3 September.—On the 3rd September, 1736, Joshua Harding and John Vernham were hanged at Bristol for housebreaking, but after they had been cut down and put in their coffins they both came to life. Vernham was bled, but died about eleven at night. Harding, however, "continuing alive, was put in Bridewell where great numbers of people resorted to see him. He said he only remembered his being on the gallows and knew nothing of Vernham's being with him. Having been always defective in his intellects he was not to be hanged but to be taken care of in a Charity House."

4 September.—Jack Shrimpton was born at Penn, in Buckinghamshire, and apprenticed to a London soap boiler. He grew restless, however, and joined a cavalry regiment, but finding little profit there he turned highwayman on the Oxford Road, where he had the usual ups and downs of his calling. Once he met a couple of bailiffs taking a farmer of his acquaintance to prison for a £6 debt. He paid the money himself, but afterwards waylaid them and got it back. Another time a poor miller, attempting robbery for the first time, tried to hold him up, but he, pitying the fellow's simplicity, frightened him by firing his pistol wide and then proceeded to teach him the elements of his art, proposing a joint adventure. The miller agreed, but later, when Shrimpton was not looking, he knocked him off his horse with a blow from behind and took eighty guineas from him. Shrimpton was eventually caught at Bristol after shooting a watchman who had arrested him while he was drinking late one night in a disreputable house. He was convicted of murder and hanged at St. Michael's Hill on the 4th September, 1713.

5 September.—Richard Morgan was called to the Bar at Lincoln's Inn in 1529 and subsequently became Serjeant-at-Law and Recorder of Gloucester. He remained a Roman Catholic throughout the religious changes of the times and on the death of Edward VI he unhesitatingly disregarded the proclamation of Lady Jane Grey as Queen and joined Mary at Kenninghall Castle in Norfolk. Very soon afterwards, on the 5th September, 1553, he was rewarded with the place of Chief Justice of the Common Pleas. He was one of the Commissioners for the trial of Lady Jane and the ordeal is said to have brought about a breakdown. He resigned in 1555 and died in the following year.

6 September.—Mathias Keys was the son of an innkeeper at Billericay in Essex, who set him up in his own line of business at Bristol in a house which had long been well frequented; but he neglected his guests for horse-racing, cock-fighting and gaming, and eventually fled from his creditors to turn highwayman. In 1747 he was condemned to death at Chelmsford, but reprieved, whereupon he joined the Navy and distinguished himself under Admiral Boscawen at the siege of Pondicherry, where he lost an eye. On his return to England, however, he took to the highway again. His last exploit was to surprise and rob two gentlemen in a post-chaise. After he had gone off, however, they unyoked the horses, rode after him and in their turn took him off his guard. They brought him to justice and he was hanged on Kennington Common on the 6th September, 1751.

Notes of Cases.

KING'S BENCH DIVISION.

R. *v.* Woking Justices, *ex parte* Johnstone.

Viscount Caldecote, C.J., Humphreys and Tucker, JJ.

11th June, 1942.

Summary jurisdiction—Recovery of fines—Inquiry as to defendant's means—No power in justices holding inquiry to pass sentence not passed on conviction—Money Payments (Justices Procedure) Act, 1935 (25 & 26 Geo. 5, c. 46), s. 1 (1) (3).

Application for an order of *certiorari*.

On the 2nd May, 1942, the applicant was ordered by Woking justices to pay £150 on each of five summonses within twenty-eight days, or, in default of payment, be committed to prison for three months on each summons, the terms to run concurrently. The order was made in the following circumstances. On the 17th December, 1941, a company called Prices (Wholesale) Chemists, Limited, were convicted of selling goods in excess of the quota permitted by the Limitation of Supplies (Miscellaneous) (No. 5) Order, 1940, and penalties of £100 on each of ten summonses were imposed. As a director the applicant was fined £150 on each of the summonses, with fifteen guineas costs. He was allowed twenty-eight days in which to pay those sums, no order being then made for his committal to prison in default of payment, or otherwise. On the 28th January, 1942, £750, being half of those penalties, was paid on behalf of the applicant by Woodlands Chemists, Limited, by whom he was then employed as managing director. On the 12th March, 1942, that company was summoned for similar offences, penalties amounting to £10,000, with fifteen guineas costs, being imposed. As a director of that company, the applicant was also fined £10,000, with fifteen guineas costs. Woodlands Chemists, Limited, and the applicant were given until the 12th June for payment. No term of imprisonment was ordered. In consequence of the penalties thus imposed on Woodlands Chemists, Limited, and the applicant, he was unable to obtain money with which to pay the balance of £750 of the penalties imposed on him at Woking on the 17th December, 1941, and, further, was unable to meet his liabilities. On the 23rd March, 1942, he filed his petition in bankruptcy at Guildford County Court, a receiving order and adjudication being made on the same day, when his assets were £85 and debts owing by him £63 1s. for income tax, with the penalties and costs referred to, £11,531 10s. On the 2nd May, he was summoned under s. 11 of the Money Payments (Justices Procedure) Act, 1935, to attend Woking Petty Sessions for an inquiry as to his means in respect of the £750 still owing on the five penalties imposed in December, 1941. The applicant gave evidence of the above facts, and stated that all his assets had been taken in his bankruptcy, that he had no assets at all; that in consequence of his bankruptcy he had lost his employment with the two companies; that he had a wife and two children dependent on him; that so long as he was a bankrupt he could not practise as a pharmaceutical chemist; and that he had no means with which to pay any part of the £750 outstanding. The justices thereupon ordered him to pay the £750 within twenty-eight days and in default to be committed to prison for three months on each summons, the terms to be concurrent. He now applied for an order of *certiorari* for the quashing of that order on the grounds that it was contrary to the Act of 1935 and the Criminal Justice Administration Act, 1914; that there was no evidence that he had means; and that the only evidence before the court was that he was bankrupt.

Viscount Caldecote, C.J., said that s. 11 of the Act of 1935 prescribed the machinery of carrying out s. 1 (3) which provided: "a warrant of commitment to prison in respect of the non-payment of a sum adjudged to be paid by a conviction . . . shall not be issued" where time has been allowed for payment, unless after the defendant's conviction "the competent court has made inquiry as to his means in his presence . . ." The Act was the last of a series of Acts which had progressively modified the harshness of the law governing unsatisfied pecuniary penalties. Section 1 of the Act of 1914 regulated committal to prison for non-payment of fines, providing relief for those "committed summarily to prison on their failure to make immediate payment of a fine." The justices here could not, on the materials before them, reach any other conclusion than that the applicant had no means. They had, notwithstanding that, made an order committing him to prison if he did not pay within a further twenty-eight days. It was argued that the justices, on the inquiry in May, 1942, had no jurisdiction to make the order complained of. It was first to be observed that in making such an order at that inquiry the justices were assuming power to do something which the court which had convicted the applicant had power to do. There was, however, nothing in the relevant statutory provisions which empowered justices inquiring into the means of a defendant to pass a sentence on him in respect of the offence of which he had been convicted on an earlier occasion. Furthermore, the very subsection—s. 1 (1) of the Act of 1935—on which counsel for the justices relied, provided for a case of such gravity as to require imprisonment in default of payment without further inquiry; but certain procedure was laid down for that event. The justices who convicted the applicant had not purported to exercise that power. It was the words in s. 1 (3) which prevented commitment to prison of a person who had been allowed time to pay unless, since conviction, there had been an inquiry as to means, that needed interpretation. The argument that the tribunal holding that inquiry might commit the defendant to prison if they thought it a bad case, even where he had no means, was contrary to the intention of the Act. The application must be granted.

Counsel: *C. G. A. Cowan; Harold Williams.*

Solicitors: *Golding, Hargrove & Palmer; Joynson-Hicks & Co., for W. Davies*, Woking.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Re H. H. Brown, deceased.

Langton, J. 21st May, 1942.

Probate—Earlier complete will—Later incomplete will—Revocatory clause in later will—Dependent relative revocation—Both wills admitted—Revocatory clause excluded.

The testator left behind him two testamentary documents, one dated 21st January, 1934, and the second 13th December, 1939. The first was made with professional assistance and carefully disposed of every item of his property. The second was written entirely in his own handwriting, and contained a clause purporting to revoke all testamentary dispositions hitherto made. The fourth numbered clause of the will ran: "On the death of my said wife I direct my trustees to sell the real estate, as also to call in sell and convert the movable estate into money and to divide the proceeds thereof among the aforementioned beneficiaries herein and interests named in following proportions, namely . . ." There followed seven or eight ruled lines of blank and on the next page the document contained the number "4" and the word "continued" in the handwriting of the testator with a further five or six lines for the names and interests which he had described in the body of the clause. There was not one word of writing to indicate any name or interest as a beneficiary.

Langton, J., said that it was perfectly clear that the testator took good care of his property and had a very clear notion of what he wanted to do with it. The reason why he made the second will was not obscure. He desired to do so, first, because he thought that the language of the first will was unnecessarily obscure (a fear which I think is not borne out by a perusal of the document) and secondly, because some of the beneficiaries under the will of 1934 having died, he desired to bring his dispositions more up to date. There was no evidence to show that he had in any way varied his desires in between the dates 1934 and 1939. His lordship said that he entirely followed the opinion of Atkin, L.J., as he then was, in a case in which he said that this doctrine of dependent relative revocation seemed to be overloaded with unnecessary polysyllables. The whole matter could be quite simply expressed by the word "condition." Was the revocatory clause inserted conditionally or not, the condition being that a new will should be set up by the document in which the revocatory clause appeared? The new matter which this case introduced was as to whether it was possible to say that the revocatory clause was conditional, although part of the document in which it was included was good and should be admitted to probate. It was clear from *Sotheran* v. *Dening*, 20 Ch. D. 99, that it was the business of the court, if possible, to give effect to the intentions of the testator. His lordship also referred to *Dancer* v. *Crabb*, 3 L.R. P. & D. 98, at p. 104, and said that although that was not direct authority for the course he was taking, there were other authorities, *In the Goods of Irvine* [1919] 2 Ir. R. 485 and so on, which justified him in holding that the testator put the revocatory clause into the second will conditionally upon concluding that second will, and as he failed to conclude it, he would decree that the second will be admitted to probate with the first will excluding the revocatory clause from probate.

Counsel: *Clifford Mortimer; Marstel Reynolds.*

Solicitors: *Cooper, Bake, Fettes, Roche & Wade; Smith, Rundell, Dods and Rockett.*

[Reported by Maurice Share, Esq., Barrister-at-Law.]

Practice Direction.

Directions as to Service of Proceedings in the Chancery Division on Members of the Royal Air Force and Women's Auxiliary Air Force.

The Under-Secretary of State for Air has informed the Senior Judge of the Chancery Division that he will give to Solicitors assistance in effecting service of proceedings taken in the Chancery Division if Solicitors follow the following procedure:—

On written application by the Solicitor (addressed as indicated below) stating the reason for the request and asking for the address of a member of the Royal Air Force or Women's Auxiliary Air Force, and undertaking that the information received will only be used for the purpose of effecting service of legal process issued out of the Chancery Division, it will be stated whether the member is serving in this country or overseas. Such applications should be addressed as follows, according to the circumstances with regard to the person whose address is required:—

R.A.F. Officers: "The Under-Secretary of State for Air (S.7 (*b*))."

W.A.A.F. Officers: "The Under-Secretary of State for Air (S.11 (*c*))."

R.A.F. and W.A.A.F. Airmen and Airwomen: "The Air Officer in Charge of Records, Record Office, Royal Air Force, Gloucester."

If the member is serving in this country, information will also be given as to the last recorded address, to enable the Solicitor to effect personal service.

If the member is serving in this country, before attempting to serve the member, the Solicitor should write to the Commanding Officer asking for an appointment when the Solicitor can attend to effect personal service, when, subject to the exigencies of the service at the time, the matter will be brought to the notice of the member and facilities for such an appointment will be afforded.

If the member is serving overseas, his or her address and unit will, whenever possible, be given, but for service and security reasons this may not always be practicable. In such cases, moreover, the Commanding Officer is not authorised to afford any assistance and the Solicitor should not, therefore, make any application to him.

A. Holland,
Chief Master,
Chancery Division.

August, 1942.